

***Remarks***

Reconsideration of this Application is respectfully requested.

Upon entry of the foregoing amendment, claims 4 and 13-14 are pending in the application, with claim 4 being the independent claim. Claim 4 has been amended. Support for the amendment is found in the specification, in Examples A, B and D-F on pages 79-80 and 83-88 and in Table 21 on page 70 of the specification as filed. These changes are believed to introduce no new matter, and their entry is respectfully requested.

Based on the above amendment and the following remarks, Applicants respectfully request that the Examiner reconsider all outstanding objections and rejections and that they be withdrawn.

***Description of the Invention***

Claim 4, as amended, is directed to a synergistic composition comprising the carboxamide (1-1), *N*-(3',4'-dichloro-5-fluoro-1,1'-biphenyl-2-yl)-3-(difluoromethyl)-1-methyl-1*H*-pyrazole-4-carboxamide and at least one triazole selected from the group consisting of propiconazole, epoxiconazole, prothioconazole, tebuconazole, and bitertanol, in a ratio of 50:1 to 1:50 of carboxamide to triazole.

***Rejection under 35 U.S.C. § 103(a)***

Claims 4 and 15-16 have been rejected under 35 U.S.C. § 103(a) as being allegedly unpatentable over U.S. Application No. 2002/0198222 to Bruns *et al.* ("Bruns") in view of DE 102 15 292 to Dunkel *et al.* ("Dunkel"). In view of the

cancellation of claims 15-16, the rejection is rendered moot. Applicants respectfully traverse the rejection of claim 4.

**A. Prima Facie Case of Obviousness Has Not Been Established**

Applicants reiterate that for the reasons detailed in Applicants' Amendment and Reply of March 13, 2009, claim 4 is not *prima facie* obvious in view of the cited references.

Brun's is directed to triazolopyrimidine derivatives as microbicides and compositions comprising the same. The claims of the present invention, in contrast, are directed to a composition comprising a carboxamide compound (1-1) and at least one triazole selected from the group consisting of propiconazole, epoxiconazole, prothioconazole, tebuconazole, and bitertanol, in a ratio of 50:1 to 1:50.

Applicants respectfully disagree with the Office's statement that "Brun's et al teaches the combination of microbidual carboxamides with additional active agents, which includes tebuconazole ...." (Office Action, p. 9.)

Applicants reiterate that Brun's does not disclose the carboxamides of the present application. The triazolopyrimidines of Brun's are a completely different class of compounds. In fact, the compound that the Office points to as being a carboxamide allegedly disclosed by Brun's, is a benzothiazole compound. Brun's discloses a combination of triazolopyrimidines with a variety of known fungicides, bactericides, acaricides, nematicides or insecticides. (Brun's, para 0080.) Tebuconazole is just one compound among many other compounds that Brun's teaches. Brun's does not provide

any reason for a person of ordinary skill in the art to select tebuconazole over any other of the many compounds that it discloses.

Dunkel does not cure the deficiencies of Bruns. Dunkel is directed to pyrazolyl carboxamide derivatives useful as fungicides and bactericides for the protection of plants. The Office states that "it would have been *prima facie* obvious to substitute the carboxamides taught by Bruns et. al. for the instantly claimed carboxamide, both function as microbiocides and fungicides." (Office Action, p. 9.) Applicants respectfully disagree. Substituting the carboxamide derivatives allegedly taught by Bruns with the carboxamide derivatives of Dunkel would not yield the compositions of the present invention.

In sum, there is nothing in the cited references that would indicate a reason to a person of ordinary skill in the art to combine carboxamides of the present application with triazole fungicides. Thus, for this reason, Applicants respectfully submit that the Examiner has not established a *prima facie* case of obviousness.

#### ***B. Response to Applicant' Arguments***

The Office states that "[t]he Applicants argued that Bruns et. al. teaches a combination of a structurally different carboxamide with triazoles such as tebuconazole." (Office Action, p. 3.) Applicants respectfully disagree and submit that the Office has mischaracterized Applicants' arguments. Applicants did not argue that Bruns et. al. teaches a combination of a structurally different carboxamide with triazoles such as tebuconazole. Instead, Applicants argued that the triazolopyrimidines of Bruns are a completely different class of compounds and that the compound the Office points to in

Bruns as being a carboxamide of the present invention is actually a benzothiazole, which is not even in the same general structural class as the carboxamide (1-1) of the present invention.

The Office also states that "the amended instant claims are not directed to a synergistic combination." (Office Action, p. 5.) In response, Applicants have amended claim 4 to specifically recite a synergistic composition having a ratio in the range of 50:1 to 1:50 for the combination of compound (1-1) with a triazole selected from the group consisting of propiconazole, epoxiconazole, prothioconazole, tebuconazole, and bitertanol. Neither Bruns nor Dunkel discloses a ratio of a compound of the present invention to a triazole that would yield a synergistic combination. The data presented in the specification on pages 79, 80 and 83-88 show that the claimed combination has a synergistic fungicidal effect.

Accordingly, for at least the reasons discussed above, claim 4 is not *prima facie* obvious over Bruns and Dunkel. Reconsideration and withdrawal of the rejection of claim 4 under 35 U.S.C. § 103(a) is respectfully requested.

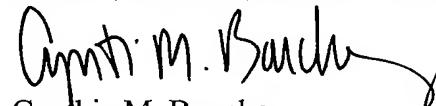
***Conclusion***

All of the stated grounds of objection and rejection have been properly traversed, accommodated, or rendered moot. Applicants therefore respectfully request that the Examiner reconsider all presently outstanding objections and rejections and that they be withdrawn. Applicants believe that a full and complete reply has been made to the outstanding Office Action and, as such, the present application is in condition for allowance. If the Examiner believes, for any reason, that personal communication will expedite prosecution of this application, the Examiner is invited to telephone the undersigned at the number provided.

Prompt and favorable consideration of this Amendment and Reply is respectfully requested.

Respectfully submitted,

STERNE, KESSLER, GOLDSTEIN & FOX P.L.L.C.



Cynthia M. Bouchez  
Attorney for Applicants  
Registration No. 47,438

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1100 New York Avenue, N.W.  
Washington, D.C. 20005-3934  
(202) 371-2600  
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